

STATE OF OREGON
COUNTY OF JACKSON
PROPOSED AND FINAL ORDER
FOR ALLOCATION OF CONSERVED WATER

Pursuant to ORS 537.470 and OAR Chapter 690, Division 18, after notice was given and no comments were filed, this order approves, as conditioned or limited herein, an application for allocation on conserved water submitted by:

Larry and Helen Zellen 11020 E. Evans Creek Rd. Rogue River, OR 97537	Carl and Jane Smith 11172 E. Evans Creek Rd. Rogue River, OR 97537	Oregon Water Trust 111 S.W. Front Ave., Suite 404 Portland, OR 97204
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Background

The application for the allocation of conserved water proposes a reduction in the maximum rate of diversion allowed under Certificate 72139 in the name of Carl and Jane Smith and Certificate 72140 in the name of Larry and Helen Zellen. The water right holders (adjoining property owners) previously irrigated from the Williams and Whalen Ditch using flood irrigation. In 1995, they completed a conservation project involving a change in their points of diversion and the conversion of their method of application from flood to sprinkler irrigation.

The water right holders now pump water directly out of Evans Creek and into their respective irrigation systems. Each water right holder operates and maintains their own pumps and pipelines. The locations of the new diversions are on the water right holders' respective properties adjoining Evans Creek near River Mile (RM) 11. The conversions to sprinkler irrigation were accomplished by the installation of buried P.V.C. and aluminum pipe and sprinklers. These changes have produced a 50 percent reduction in the rates of diversion needed by the water right holders.

During normal flow years, Evans Creek contains water from the Williams and Whalen Ditch point of diversion at RM 12 to its mouth. During years when streamflows are below normal, surface flow in Evans Creek disappears at approximately RM 8. Flow reappears at the confluence with Pleasant Creek. Distribution activities on Evans Creek frequently require regulation of all post-1902 water rights. Streamflows from Pleasant Creek mask the extent to which water saved by the conservation project would normally flow to the mouth of Evans Creek.

The applicants propose regulation for the instream water right from conserved water only during periods in which surface flows do not disappear in Evans Creek. The instream water right can not be protected below the point at which the creek disappears. In addition, seepage losses from the Williams and Whalen Ditch and runoff from lands which were flood irrigated likely returned to Evans Creek above RM 8. Allocation and protection of this water below RM 8 for instream purposes could result in harm to existing downstream water rights.

There is an existing instream water right for the purpose of supporting aquatic life and minimizing pollution on Evans Creek from Pleasant Creek to the mouth. The right is evidenced by certificate 59705. The date of priority is November 3, 1983. Applications for two instream water rights have been filed by the Oregon Department of Fish and Wildlife for flows in Evans

Creek. If issued, the rights would protect streamflows in Evans Creek from Morrison Creek at RM 25.7 to the mouth. The dates of priority for the rights would be December 7, 1990.

ORS 537.470 requires the Commission to allocate to the state a percentage of conserved water equal to the percentage of the public funds used to complete the project, up to a maximum of 75 percent, unless the applicants propose a higher allocation to the state. Public funds contributed 48 percent of the construction costs. However, the applicants have proposed that 100 percent of the conserved water be allocated to an instream water right in Evans Creek for the purpose of supporting aquatic life. No increase in out-of-stream use is proposed.

The first right modified under this order was confirmed by decree of the Circuit Court of the State of Oregon for Jackson County as evidenced by Certificate 72139 in the name of Carl and Jane Smith. The decree is recorded in the Order Record of the Water Resources Director in Volume 4, at Page 1. The date of priority is 1896.

That water right allows the use of Evans Creek, a tributary of the Rogue River, for irrigation of 1.80 acres. The amount of water which may be used under this right is limited to an amount actually beneficially used and shall not exceed 0.05 cubic feet per second or its equivalent in case of rotation, if available, measured at the authorized point of diversion from the source: NE 1/4 NE 1/4, Section 12, T 35 S, R 4 W, WM; 196 feet south and 616 feet east from the NW corner of the NE 1/4 NE 1/4, Section 12. The authorized place of use is SE 1/4 SE 1/4, Section 1 (1.12 acres) and NE 1/4 NE 1/4, Section 12 (0.68 acres), T 35 S, R 4 W, WM.

The second right modified under this order was confirmed by decree of the Circuit Court of the State of Oregon for Jackson County as evidenced by Certificate 72140 in the name of Larry and Helen Zellen. The decree is recorded in the Order Record of the Water Resources Director in Volume 4, at Page 1. The date of priority is 1896.

That water right allows the use of Evans Creek, a tributary of the Rogue River, for irrigation of 2.28 acres. The amount of water which may be used under this right is limited to an amount actually beneficially used and shall not exceed 0.06 cubic feet per second or its equivalent in case of rotation, if available, measured at the authorized point of diversion from the source: NE 1/4 NE 1/4, Section 12, T 35 S, R 4 W, WM; 385 feet south and 158 feet east from the NW corner of the NE 1/4 NE 1/4, Section 12. The authorized place of use is SE 1/4 SE 1/4, Section 1 (0.67 acres) and NE 1/4 NE 1/4, Section 12 (1.61 acres), T 35 S, R 4 W, WM.

The right to use water for the above purposes is restricted to beneficial use on the lands described and is subject to all other conditions and limitations contained in the decree.

Findings

1. The conservation projects yielded a 50 percent reduction in the rates of diversion required to meet the beneficial uses under the original water rights. The reduction is a result of eliminating seepage losses in the ditch and changing irrigation practices from flood irrigation to sprinklers.
2. It appears that the proposed allocation of conserved water to an instream water right will not cause harm to existing rights, if limited to the reach of Evans Creek between RM 12 and RM 8.
3. The proposed allocation is consistent with the requirements of OAR 690-05-045.
4. No conserved water is needed to mitigate harm to existing water rights.

5. No duty was established for these water rights. The rate for the remaining rights shall be 0.025 cubic feet per second in the names of Carl and Jane Smith and 0.03 cubic feet per second in the names of Larry and Helen Zellen. The rights may be used in rotation to allow each water right holder the use of up to 0.055 cubic feet per second, provided the total diverted by both water right holders shall not exceed 0.055 cubic feet per second.
6. The 0.055 cubic feet per second of conserved water is needed to support instream uses in Evans Creek. There is an instream water right on Evans Creek from Pleasant Creek (at approximately RM 8) to the mouth. There are no existing instream water rights on Evans Creek between RM 12 and RM 8.
7. The amount of water allocated is consistent with ORS 537.470 (3).
8. No conserved water will be used out-of-stream. The state's portion of the conserved water will be dedicated to an instream water right on Evans Creek from RM 12 to RM 8.
9. The project was constructed and completed in 1995 and conserved water may be allocated under OAR 690-18-014 (2). The applicants have filed notice of completion of the conservation measures and no additional time has been requested or is needed to finalize the allocation.
10. The conditions listed in the order below, in addition to the conditions and limitations provided under the decree and subsequent modifications in the rights, will protect existing water rights and shall be included in the respective water right certificates.

Order

Now, therefore, it hereby is ordered that:

1. Certificates 72139 and 72140 are canceled.
2. A new certificate describing the remaining portion of the existing water right evidenced by Certificate 72139 shall be issued in the name of Carl and Jane Smith. The water right shall allow for the use of Evans Creek, a tributary of the Rogue River, for irrigation of 1.80 acres. The amount of water which may be used under the right shall be limited to an amount actually beneficially used and shall not exceed 0.025 cubic feet per second or its equivalent in case of rotation, if available, measured at the authorized point of diversion from the source. The date of priority is 1896.

The authorized point of diversion is NE 1/4 NE 1/4, Section 12, T 35 S, R 4 W, WM; 196 feet south and 616 feet east from the NW corner of the NE 1/4 NE 1/4, Section 12. The authorized place of use is SE 1/4 SE 1/4, Section 1 (1.12 acres) and NE 1/4 NE 1/4, Section 12 (0.68 acres), T 35 S, R 4 W, WM.

In addition to the conditions and limitations provided under the decree and any subsequent modifications in the rights, the following condition shall be included on this right:

This right may be used in rotation with the certificate recorded at page (the right described in 3. below), State Record of Water Right Certificates, to allow the diversion and use of up to 0.055 cfs, provided the total diverted under both water rights shall not exceed 0.055 cfs. The rotation shall be in accordance with an agreement filed with and acceptable to the Watermaster. This condition shall not limit the ability of the water right holder to enter into any other rotation allowed by law.

3. A new certificate describing the remaining portion of the existing water right evidenced by Certificate 72140 shall be issued in the name of Larry and Helen Zellen. The water right shall allow for the use of Evans Creek, a tributary of the Rogue River, for irrigation of 2.28 acres. The amount of water which may be used under the right shall be limited to an amount actually beneficially used and shall not exceed 0.03 cubic feet per second or its equivalent in case of rotation, if available, measured at the authorized point of diversion from the source. The date of priority is 1896.


The authorized point of diversion is NE 1/4 NE 1/4, Section 12, T 35 S, R 4 W, WM; 385 feet south and 158 feet east from the NW corner of the NE 1/4 NE 1/4, Section 12. The authorized place of use is SE 1/4 SE 1/4, Section 1 (0.67 acres) and NE 1/4 NE 1/4, Section 12 (1.61 acres), T 35 S, R 4 W, WM.

In addition to the conditions and limitations provided under the decree and any subsequent modifications in the rights, the following condition shall be included on this right:

This right may be used in rotation with the certificate recorded at page (the right described in 2. above), State Record of Water Right Certificates, to allow the diversion and use of up to 0.055 cfs, provided the total diverted under both water rights shall not exceed 0.055 cfs. The rotation shall be in accordance with an agreement filed with and acceptable to the Watermaster. This condition shall not limit the ability of the water right holder to enter into any other rotation allowed by law.

4. A new certificate confirming the instream water right shall be issued in the name of the Water Resources Department to be held in trust for the benefit of the people of the State of Oregon. The instream water right shall be for 0.055 cfs to be maintained for the purposes of supporting aquatic life and minimizing pollution during the period from April 1 to November 1 of each year, in Evans Creek, tributary to the Rogue River, from RM 12 (near the original point of diversion, the Williams and Whalen Ditch in the SE 1/4 SE 1/4, Section 6, T 35 S, R 3 W, WM) to River Mile 8, in Section 15, T 35 S, R 4 W, WM, with a priority date of 1896 plus one minute.

Witness the signature of the Water Resources Director, affixed Nov. 13, 1996.



Martha O. Pagel, Director

If no protest is filed within 60 days of the date of this order, the order becomes final.